



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Eighth session

SUMMARY RECORD OF THE 108th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 April 1992, at 3 p.m.

Chairman: Mr. VOYAME

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the session.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Luxembourg (continued) (CAT/C/5/Add.29)

1. At the invitation of the Chairman, Mr. Duhr, Miss Konsbruck and Mr. Schockweiler (Luxembourg) took seats at the Committee table.
2. Mr. DUHR (Luxembourg), replying to questions raised in connection with his country's initial report, referred first of all to the relationship between domestic legislation and the obligations arising under international treaties. In fact, articles 1, 8 and 14 of the Convention against Torture could be applied directly by domestic courts; in all cases a thoroughgoing process of verification was carried out to ensure compatibility with treaty obligations, but in the event of conflict the provisions of the Convention would prevail.
3. Paragraph 5 of his country's report gave some examples of the case-law that had developed in connection with the Convention. It had unfortunately not been possible to gather together all the relevant information on that topic prior to submission of the report, and further details regarding judicial decisions would be included in the next report.
4. The question had been raised whether the police were aware of the fact that the Convention had been ratified by Luxembourg. All legislative enactments were duly made public in the official gazette, and law enforcement agencies were expected to familiarize themselves with their content, although there was no specific requirement to do so.
5. A plaintiff could invoke the terms of the Convention in a domestic court, and it was up to the Council of State to determine whether existing legislation was compatible with both the Constitution and the Convention. There was no constitutional court as such, but every effort was made before signing an international treaty to determine whether problems would arise with its application in the courts.
6. Turning to the issues raised by specific articles of the Convention, he said that neither the Luxembourg Constitution nor the Penal Code provides a specific definition of torture on the lines of article 1 of the Convention. Luxembourg law did not differentiate between torture and ill-treatment, and there was evidently scope for a more systematic interpretation which would distinguish between ill-treatment and physical or mental torture. It was hoped that more precise texts on that question would be available in the near future.
7. No problem arose in connection with article 3, which applied without derogation in the courts.

8. With regard to article 4, he said that the references in article 438 of the Penal Code to "hard labour" derived basically from the Code Napoléon, and as such could be regarded as a leftover from earlier times. It should also be pointed out that the death penalty had been abolished, and that maximum terms of sentence could not be increased ex post facto.

9. Article 5 established the principle of territoriality in criminal law, but in Luxembourg some exceptions to that principle were accepted: for example, if a citizen of Luxembourg committed an offence in a territory other than Luxembourg itself, he or she might be amenable to the jurisdiction of the State in which the offence had been committed. Provision was also made for the apprehension in another territory of a person who had committed an offence against Luxembourg law. It was unfortunate that no arrangements had been established for cases in which a Luxembourg citizen sought by the authorities of another State for an offence relating to torture might face penalties more severe than those provided under the law of Luxembourg itself.

10. Mr. SCHOCKWEILER (Luxembourg) said that new provisions on detention in custody had been introduced in 1989: they established that such custody should not be of more than 24 hours' duration. The State Prosecutor was entitled to require fingerprints to be taken, or a search of the person for "dangerous objects" if that were deemed necessary, but the defendant was equally entitled to request an independent examination by a doctor of his or her choice if allegations of ill-treatment were made.

11. Mr. DUHR (Luxembourg) said that the criteria for pre-trial detention were based on the likelihood of an attempt to flee custody; if the suspect was considered likely to commit further offences, a warrant for detention on the grounds of possible default could be issued. However, the pre-trial detention must not be disproportionate to the likely penalty for the alleged offence.

12. Regarding the question of detention in general, he said that there was one major prison in Luxembourg, in which men and women were held in separate quarters. Minors were not kept in custody. Even under a strict regime of detention, detainees could participate in some communal activities and had a permanent right of access to their legal representatives. However, special arrangements were made in penal establishments to house prisoners who were regarded as dangerous. Complaints regarding conditions of detention could be referred to the Director of Public Prosecutions.

13. He had noted the questions raised in regard to article 7, where the problem - territoriality - was the same as for article 5. With regard to article 8, no further comment seemed necessary since the provisions of the relevant international instruments formed an integral part of domestic legislation. A question had been raised, in regard to article 9, as to whether Luxembourg was able to make appropriate arrangements with other States concerning the supply of evidence and other assistance; the reply was in the affirmative, provided that the political, legal and penitentiary regimes in the country concerned were acceptable and that it had no known record of systematic violations of human rights.

14. On the subject of article 10, he was unable to provide details of the education and information given in the training of relevant personnel, but he took it that the training would conform to the Convention's provisions. He thought it likely that medical students in Luxembourg were given such information during their first year of study. In any case, the Luxembourg authorities could take up points made by the Committee in that connection.

15. Since, in the Committee's view, the information provided about articles 11, 12 and 13 was not specific enough, he suggested that the requisite information should be included in the supplementary report. In that connection, there would doubtless be some cases, for example, of officers having appeared in court on charges not of torture but of common misdemeanours. With regard to article 14, he had nothing to add. With reference to article 15, the relevant legislation was rather complex, but he felt that a suitable reply could be included in the supplementary report.

16. A written reply would also be given to the various questions of a general nature about the judicial system in Luxembourg. The Constitution guaranteed the separation of powers and the impartiality of judges.

17. He would briefly touch on certain other questions raised. With regard to meetings with relevant non-governmental organizations and other bodies, there was nothing of that nature, as far as he was aware, specifically on the subject of torture; he would raise the matter, however, with a view to the possible holding of such meetings.

18. The principle of habeas corpus was enshrined in the provisions which safeguarded personal freedoms - for example, those to the effect that persons could be prosecuted only according to the law and could be arrested only pursuant to a warrant issued by a judge. In Luxembourg there was no type of special jurisdiction, and no high-security prisons. Nor was there any form of State security police; the entire police force was administered by the Ministry of Justice. Legislative reforms would eventually make the system even more transparent.

19. His replies were, of course, of a preliminary nature. He assured the Committee that his earlier request - that replies to certain questions should be deferred and included in a later report - implied no desire by his delegation to shirk any of its responsibilities under the Convention. If the Committee had any further questions at the current meeting, he would do his best to answer them.

20. The CHAIRMAN thanked the representatives of Luxembourg for their replies to the questions raised. He invited the members of the Committee to voice any further comments or questions they might have.

21. Mr. EL-IBRASHI asked whether Luxembourg recognized the competence of the European Court of Human Rights. Did the police have the right to conduct an inquiry into any allegation of ill-treatment and, if so, in what way might the circumstances be distinct from those of an inquiry ordered by an examining magistrate?

22. Mr. SCHOCKWEILER (Luxembourg) said that, as far as he was aware, the European Court was competent to authorize individual recourse to the courts in a State party to the European Convention. In certain cases, police officers could be authorized to carry out an inquiry, subject, of course, to the laws which governed the gathering and presentation of evidence. A full reply to those questions would appear in the supplementary report.

23. The CHAIRMAN, referring to article 6 of the Convention, asked what provision was made for any person in custody pursuant to paragraph 1 of that article to be assisted in communicating immediately with the nearest appropriate representative of the State of which he was a national or where he usually resided. The point was a minor one and could be clarified in the next periodic report.

24. Mr. LORENZO suggested that the Country Rapporteur's final report should say that the Committee welcomed the statement that torture did not exist in Luxembourg. It could also reflect the Committee's hope that future legislation in Luxembourg would nevertheless provide for stricter penalties for torture, making a distinction between the latter and other forms of ill-treatment. The Convention was meant to provide a means to deal with acts committed by State officials or with their connivance, and to make it clear that the measures covered mental and psychological ill-treatment too. The Committee should likewise express the hope that Luxembourg would take further steps to ensure that adequate education and information regarding the prohibition of torture were fully included in the training of all relevant personnel. Referring to article 1 of the Convention, he said he was surprised that the term "torture" was not expressly defined either in the Luxembourg Constitution or in the legislative texts. He was also surprised that, in Luxembourg law, the concept of bodily harm seemingly covered mental and psychological ill-treatment as well. Perhaps the Committee could suggest that future legislation should make clear distinctions.

25. Mr. SCHOCKWEILER (Luxembourg) said that, with regard to article 1, he could only repeat that the definition of torture, as contained in the Convention, was ipso facto applied in domestic law. He nevertheless agreed to bring the matter to the authorities' attention. With regard to the nature of torture or ill-treatment, physical or mental, the Convention likewise took precedence over domestic law. Until a more detailed legislative text was in place, any interpretation would, of course, be a matter for jurisprudence.

26. Mr. MIKHAILOV (Country Rapporteur) thanked the representatives of Luxembourg for the report and their replies to the questions raised. He wished to make some comments of a general nature. Luxembourg was a small democratic country, with no serious problem of torture or any other form of ill-treatment. The report before the Committee, although broad in scope, was not fully comprehensive, although the answers given to the Committee's questions had dealt with some of its shortcomings. He noted that Luxembourg's domestic legislation did not conform to all the Convention's provisions - for example, in regard to the death penalty and punishment by hard labour; amendments to the country's Penal Code should accordingly be envisaged. Nor had the report and the replies to questions provided any figures relating to relevant judicial practice. He therefore suggested that the Committee should request additional information in writing, although a supplementary report

seemed unnecessary. On the question of reporting, he did not think that the Committee had the power to extend deadlines; matters should be left to the Luxembourg authorities.

27. He congratulated the Luxembourg delegation on its report and replies, and hoped that the Committee's report would reflect its satisfaction accordingly.

28. Mr. SORENSEN (Alternate Country Rapporteur) said he endorsed the congratulations and thanks expressed to the delegation of Luxembourg. He welcomed the replies given to the questions raised, but stressed that written information was preferable.

29. While welcoming the statement that torture did not exist in Luxembourg, he suggested that the attention of the Luxembourg authorities should nevertheless be drawn to the Committee's views on the need to align domestic legislation more closely with the relevant international instruments. In that connection, he would like to see a legislative definition of torture, including a definition of psychological torture.

30. With regard to article 3 of the Convention, he felt that further clarification was needed about its applicability under domestic legislation. Likewise, with regard to what had been said about the universal applicability of articles 4 to 8, the Committee looked forward to receiving information on requisite legislative measures to close any possible loopholes. And while welcoming the information provided in regard to article 10, he felt that the training of relevant personnel should include education and information not only on human rights in general but specifically on torture. In particular, the attention of national medical associations should be drawn to that matter; to give information to first-year students was not enough.

31. With regard to article 11, the Committee had requested elaboration of certain points, including a description of the legal system, with particular reference to the position of judges and prosecutors and to measures to safeguard the independence of the judiciary. The Committee would also like to know whether police activities were investigated by the police themselves or by an outside body. It hoped, too, that the promised information on the prison system and guidance given to police and prison personnel would cover regulations as well as statistics relating to solitary confinement and the separation of females and minors.

32. With regard to article 14, a description of the machinery in place to ensure redress for victims of torture, and relevant statistics, would be welcome.

33. Perhaps the points raised could be covered in a written reply, including any further information the Luxembourg authorities might wish to provide. Such a text, which could comprise an outline of new legislation, could be sent with the periodic report, on the understanding that the Committee would deal with both documents at the same time, namely, early in 1993.

34. Mr. KHITRIN agreed with Mr. Mikhailov and Mr. Sorensen, but thought it unwise for the Committee to state categorically in its conclusions that there was no torture in Luxembourg, since a report might be received later alleging

mistreatment of prisoners. It would therefore be better to say that Luxembourg had submitted a good report and was endeavouring to eliminate inhuman and degrading treatment.

35. Mr. MIKHAILOV (Country Rapporteur) said he did not believe that there was any torture in Luxembourg or that there was a need for a supplementary report on the matter. He was sure that the necessary provisions could be introduced into the domestic legislation of Luxembourg which was an advanced and democratic country.

36. Mr. DIPANDA MOUELLE, responding to Mr. Khitrin's suggestion, proposed that the wording of the Committee's report should be: "According to the delegation of Luxembourg and the information in the report, there is no torture in Luxembourg".

37. Mr. GIL LAVEDRA supported Mr. Mikhailov's proposal, as amended by Mr. Dipanda Mouelle.

38. Mr. DUHR (Luxembourg) said that the supplementary information requested by the members of the Committee could be provided very quickly, but that it would take at least a year to introduce the legislative changes requested.

39. The CHAIRMAN said that the deadline of 28 October for the first report must stand, but in practice if the report was sent by the end of February it could be considered by the Committee at its spring session. The members of the Committee realized that Luxembourg would be unable to change its legislation so quickly, but any preparatory work done by the committee of experts would be of interest to them.

40. After an exchange of courtesies, Mr. Duhr, Miss Konsbruck and Mr. Schockweiler (Luxembourg) withdrew.

The meeting was suspended at 4.45 p.m. and resumed at 4.55 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Report on the Committee on the Rights of the Child

41. At the invitation of the CHAIRMAN, Mr. SORENSON informed the Committee that the Convention on the Rights of the Child had been adopted by the General Assembly on 20 November 1988 and had come into force on 2 September 1990. The first meeting of the Committee on the Rights of the Child had been held on 18 October 1991, at which time 98 countries had acceded to the Convention. Between 110 and 120 countries had now ratified the Convention, and because of its consequent heavy workload, the Committee on the Rights of the Child had already indicated that it would need to hold two two-week sessions a year. A preliminary working group would meet two months before each session.

42. The 10 members of the Committee on the Rights of the Child, whose Chairman was Mrs. Hoda-Badran (Egypt), had decided that they did not need translation of all the Committee's documents. A suggestion made by the Committee that the secretariat should open country files, possibly computerized, might be taken up by the Committee against Torture.

43. Although the Committee on the Rights of the Child had not indicated a desire to meet the Committee against Torture, he believed that such a meeting was desirable because the former's holistic view of children was in line with the latter's own holistic view of the survivors of torture. Like the Committee against Torture, the Committee on the Rights of the Child considered it important to create a general awareness of the problems with which it dealt. Its suggested guidelines for the World Conference on Human Rights were similar to those of the Committee against Torture. The Committee on the Rights of the Child had stressed the importance of the regional meetings for the World Conference, the first of which was to be held in Costa Rica in July. He suggested that the Committee against Torture might consider whether it too should be represented at such meetings.

44. The CHAIRMAN said that the idea of country files had already been welcomed by the secretariat. He raised the question whether the Committee's rules and finances would permit it to be represented at regional meetings for the World Conference.

45. Mr. BRUNI (Secretary of the Committee) said that the opening of computerized files on each State party was a large-scale undertaking, but the secretariat already kept country files which could be consulted by members of the Committee. They contained all the material received from and about each country, including information from non-governmental organizations and material not specifically submitted to the Committee.

46. Mr. EL-IBRASHI considered that the Committee had the right to send observers to meetings of the Committee on the Rights of the Child. It would also be desirable for the Committee to be represented at the World Conference, and he asked how such participation might be financed.

47. Mr. BRUNI (Secretary of the Committee) explained that the participation of observers from the treaty-monitoring bodies at the World Conference would have to be financed by those bodies themselves, since there was no provision for it in the budget of the Conference. The participation of observers from the Committee against Torture had not been discussed at the meeting of the States parties, but the necessary provision could probably be made.

48. After a short discussion in which Mr. BURNS and the CHAIRMAN took part, Mr. SORENSEN suggested that further discussion on the question of the representation of the Committee against Torture at regional meetings should be deferred to a forthcoming meeting, pending clarification of the decisions of the Preparatory Committee for the World Conference on Human Rights.

49. It was so decided.

Principles of Medical Ethics

50. The CHAIRMAN invited Mr. Sorensen to introduce some proposals initiated by physicians from the Danish Rehabilitation Centre for Torture Victims and from the Danish section of Amnesty International for the revision of the Principles of Medical Ethics contained in General Assembly resolution 37/194.

51. Mr. SORENSEN said that General Assembly resolution 37/194 on Principles of Medical Ethics, adopted by consensus on 18 December 1982, was already almost 10 years old, and that the Principles annexed thereto were thus arguably in need of updating to take account of the Convention against Torture, and also of evidence that had recently come to light of doctors' participation in torture. A group of physicians brought together under the auspices of Denmark's Minister for Foreign Affairs, assisted by its Ministers of Health and Justice, and with the participation of the the Danish Medical Association, the Danish Centre for Human Rights and the Danish Rehabilitation Centre for Torture Victims, had been working to strengthen the Principles so as to affirm the right and duty of the individual physician to refuse to assist in any form of torture or other cruel, inhuman or degrading treatment of persons deprived of their personal liberty, a right and duty which were not sufficiently stressed in the Principles as adopted in 1982. To that end, the working group had prepared a proposal for a revision of the United Nations Principles of Medical Ethics, which he wished to present to members of the Committee for possible discussion, in view of their expertise in that field.

52. The group's first proposal was to amend the heading to the Principles so as to provide a more precise definition of "detainees", encompassing administratively detained persons. The words "prisoners and detainees" would thus be amended to read "all persons under any form of arrest, detention or imprisonment" in the heading and throughout the ensuing Principles - a wording borrowed from the Convention against Torture.

53. Regarding Principle 1, the Group suggested the inclusion of the principle of "free informed consent", which had come to be recognized in many countries over the past 10 years. That addition was especially desirable where persons on hunger strike were concerned. The following sentence should accordingly be added: "Such medical care or treatment is to be carried out on the basis of the principle of free informed consent and without interference from the authority administering the detention or imprisonment."

54. Principle 2 would remain unchanged. With regard to Principle 3, developments in medical technology since 1982 had increased the possibilities for using organs and tissue material for the purpose of transplantation. Moreover, live subjects were increasingly used in biomedical research. There were reports of prisoners having been offered reductions in sentences in exchange for a promise to donate organs for transplantation or to participate in experiments. The validity of applying the concept of "informed consent" to persons in prison was in any case questionable. A new paragraph should thus be added to Principle 3, to read:

"No person under any form of arrest, detention or imprisonment shall thus, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health. Organ removal and participation in biomedical experiments under duress or promise of reduction of sentence or other advantages shall not be permitted."

55. Furthermore, medical examinations were sometimes necessary in order to ascertain a person's fitness for normal imprisonment, or his mental state. Forensic investigations were also occasionally necessary. Such practices were not permitted by the Principle as currently worded. A second additional

paragraph might thus be added to Principle 3, so as to legalize what had become a universally accepted practice. That paragraph would read:

"Physical examination of persons under any form of arrest, detention or imprisonment in connection with investigation of crimes by the competent authorities may, however, be performed by physicians on condition of said person's free informed consent or a judicial decision in each particular case. They shall be informed by the physicians that they are not in a real physician-patient relationship, and that the results of the examinations will be passed on to others."

56. One amendment - concerning capital punishment - was proposed to Principle 4. A new subparagraph (c) should be added:

"(c) In recognition of human integrity it is indefensible for any physician to participate in any act connected to and necessary for the execution of capital punishment."

57. Regarding that potentially controversial amendment, he explained that Principle 4 (c) reflected the Group's view that, to put it bluntly, a doctor's job was to treat people, not to kill them. When a person was executed, it was of course appropriate for a doctor to ascertain whether death had occurred. However, administration of a lethal injection, for example, was certainly no part of a medical doctor's job.

58. With a view to strengthening protection of health personnel, the group also proposed adding three subparagraphs to the existing Principle 5. The new subparagraphs would read:

Principle 5 (a)

"Health personnel, particularly physicians, have the right not to obey orders contradictory to these principles. Persons issuing orders amounting to acts of torture and other cruel, inhuman or degrading treatment or punishment are committing a crime under international law and are liable to punishment; the same applies to those complying with such orders if, under the prevailing circumstances, it was in fact possible for the person in question not to abide by the order."

Principle 5 (b)

"Expression of international support and assistance to health personnel who are resisting being involved in acts of torture and other cruel, inhuman or degrading treatment or punishment, including public protest against all efforts to hinder the upholding of the principles of medical ethics, shall not be regarded as interference in the internal affairs of any State."

Principle 5 (c)

"Public information about the existence of torture and other cruel, inhuman or degrading treatment or punishment and promotion of educational measures for all medical and law enforcement personnel and public officials to counteract this phenomenon is an obligation of all States."

59. The wording of the proposed Principle 5 (c) basically reflected the content of article 10 of the Convention against Torture. He concluded by inviting members of the Committee to express informal opinions on the proposals, opinions which would be of great relevance and value to the Danish authorities in further refining the proposals.

60. After a procedural discussion, the CHAIRMAN proposed that consideration of the draft amendments presented by Mr. Sorenson should be deferred until members of the Committee had had time to study them in detail. Discussions on the substance of the proposals could take place on a purely informal basis, perhaps the following week, at which time members would have the opportunity to express their opinions on the proposals in a purely personal capacity, without need for any formal decision by the Committee.

61. It was so decided.

The meeting rose at 5.55 p.m.